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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re W.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Appellant,

v.

W.M.,

Defendant and Respondent.

E070172

(Super.Ct.No. RIJ1201005)

OPINION

APPEAL from the Superior Court of Riverside County. Mark E. Petersen, Judge.

Dismissed.

Michael A. Hestrin, District Attorney, Robert A. Hightower, Deputy District
Attorney, for Plaintiff and Appellant.

Renee Paradis, under appointment by the Court of Appeal, for Defendant and
Respondent.

The People appeal from a juvenile court’s order vacating its prior dispositional order placing defendant and respondent W.M. (minor) at the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF), pursuant to the holding of *In re D.B.* (2014) 58 Cal.4th 941 (*D.B.*). The People argue that the juvenile court erred in applying *D.B.* to the facts of the instant case and request this court to find that minor qualifies for DJF placement. We dismiss this appeal as moot since the juvenile court terminated its jurisdiction over minor, who has reached the age of majority.¹

PROCEDURAL BACKGROUND

Minor was adjudged a ward of the court on November 14, 2012, when he was 13 years old. Throughout the following years, the court found that he committed multiple offenses and violated court orders.

On December 7, 2015, the People filed a Welfare and Institutions Code² section 602 petition alleging possession of a controlled substance on December 4, 2015. (Health & Saf. Code, § 11378.) Minor admitted the allegation.

On December 13, 2016, the People filed a subsequent Welfare and Institutions Code section 602 petition, alleging that, on or about November 14, 2015, minor discharged a firearm at an inhabited dwelling (Pen. Code, § 246), and that he actively

¹ Although minor has reached the age of majority, this opinion will refer to him as “minor” for the sake of consistency.

² All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

participated in a criminal street gang (Pen. Code, § 186.22, subd. (a)). Minor admitted the allegations.

On September 11, 2017, the Riverside County Probation Department (the probation department) recommended that minor be committed to the DJF.³

On September 28, 2017, the court adopted the probation officer's recommendation and committed minor to DJF.

On November 2, 2017, the probation department received a letter from DJF finding minor ineligible for a DJF commitment since the most recent offense of Health and Safety Code section 11378, which occurred on December 4, 2015, did not fall within section 707, subdivision (b). Although a petition was filed on December 13, 2016, and minor was adjudicated of a qualifying offense (Pen. Code § 246), he committed that offense on November 14, 2015, which was prior to the nonqualifying offense that occurred on December 4, 2015. (Welf. & Inst. Code, § 733, subd. (c) [a ward shall not be committed to DJF if “the most recent offense alleged in any petition . . . is not described in subdivision (b) of Section 707”].) The matter was referred back to the court.

On November 30, 2017, the court dismissed the Health and Safety Code section 11378 charge in order to make minor eligible for a DJF commitment. The court then indicated that its prior order committing him to DJF would remain in full effect.

³ The probation officer recommended that minor be committed to the Department of Juvenile Justice. The Welfare and Institutions Code refers to this facility as the DJF now. (§ 733.) Thus, this opinion will refer to the state placement facility as DJF.

On December 12, 2017, the Second District Court of Appeal issued its opinion in *In re A.O.* (2017) 18 Cal.App.5th 390, holding that a lower court's record that it was dismissing a count under section 782 "for the sole purpose of securing a DJF commitment" was insufficient to determine whether the dismissal was a proper exercise of discretion. (*Id.* at pp. 396-397.) After reviewing that case, the court here indicated its belief that it would be difficult to "have a commitment to [DJF] actually hold, based on the Court's reason in that recent case." It asked the parties to review the case and continued the matter.

At a hearing on January 18, 2018, the probation department recommended that the court vacate its DJF order, credit minor with 144 days of time served, release him to himself since he had reached the age of majority, and terminate the wardship as unsuccessful. However, the prosecutor argued that *D.B.* was inapplicable because the instant case was factually distinguishable. The prosecutor asserted that the DJF's finding of ineligibility was based on *D.B.*, *supra*, 58 Cal.4th 941, in which the Supreme Court concluded that a minor could only be committed to DJF, pursuant to the language of section 733, subdivision (c), if the most recent offense alleged in any petition and found to be true was listed in section 707, subdivision (b). (*D.B.*, at p.947.) He explained that minor committed a section 707, subdivision (b) offense, but no petition was filed since the investigation was ongoing. Meanwhile, minor committed a non-707, subdivision (b) offense, which was adjudicated. Subsequently, the People became aware of the section 707, subdivision (b) offense and filed a petition, which was then adjudicated. Thus, the prosecutor contended that *D.B.* should not apply where, as here, a minor commits a non-

section 707, subdivision (b) offense before the People become aware of an existing section 707, subdivision (b) offense.

The court found that *D.B.* applied and vacated its prior dispositional order committing minor to DJF. It followed the probation department's recommendation and made a new dispositional order. The court continued minor as a ward, ordered him to be committed to juvenile hall for at least 144 days, and then awarded credit for time served of 144 days, leaving a balance of zero days. It ordered him to be released to the custody of himself since he was now the age of majority, and it ordered the wardship terminated and deemed unsuccessful.

ANALYSIS

The Appeal is Moot

The People request this court to reverse the juvenile court's order, find that minor's most recently *filed* petition was his most recent offense for purposes of section 733, subdivision (c), and find that he qualifies for DJF placement. The People acknowledge that minor has already reached the age of majority and his wardship has since been terminated. They recognize the appeal is moot, but argue that we should still review this case. Minor asserts that the appeal is moot and the People are seeking an advisory opinion. We agree and decline to issue an opinion upon a moot question.

It is well settled that this court's duty " 'is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.' " (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129,

132; see *In re Antoine D.* (2006) 137 Cal.App.4th 1314, 1324 [“An appeal is moot, and should be dismissed, when any ruling by this court would not have practical impact or provide the parties effectual relief.”].) “Moreover, ‘ “[A]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.” [Citation.]’ ” (*People v. DeLong* (2002) 101 Cal.App.4th 482, 486; see *In re Sodersten* (2007) 146 Cal.App.4th 1163, 1217.)

At the outset, we note that minor reached the age of majority in August 2017, and his wardship has been terminated. A ruling would not return him to the juvenile court’s jurisdiction. “The moment the juvenile court does release wardship, the children pass completely from the mandatory jurisdiction of the juvenile court, and the jurisdiction of other courts . . . is available.” (*In re Syson* (1960) 184 Cal.App.2d 111, 117; see *In re Dana G.* (1983) 139 Cal.App.3d 678, 681 [“Once released, jurisdiction may only be gained by the filing of a new petition.”].) We therefore conclude that a successful appeal by the People would have no practical effect and that the present appeal is moot.

The People urge us to exercise our discretion to consider the issue here, positing that, although technically moot, it poses an issue of important public interest that is “ ‘capable of repetition, yet evading review.’ ” (*In re William M.* (1970) 3 Cal.3d 16,23-24, fn. 14; see *Dibona v. Matthews* (1990) 220 Cal.App.3d 1329, 1339.) The People assert that individuals like minor “who have reached the age of majority and had their cases dismissed because of the harsh application of section 733, will continue to occur,”

particularly where they have had successive petitions and have been in juvenile court for a long time. We are unpersuaded that this case presents an error that will be repeated, but will evade review. The People are asking this court to find an exception to the rule explained in *D.B., supra*, 58 Cal.4th at p. 947, that a minor is only eligible for DJF if the most recent offense adjudicated to have been committed is listed in section 707, subdivision (b). They contend that such rule should not apply here since the People filed a petition for a noneligible DJF offense when it was not aware of the existence of the prior eligible offense. Given the highly specific nature of the determination at hand, this situation is not likely to recur, and our review of the merits of the People's claim would add little to the existing body of law.

Moreover, assuming it is likely to recur, the People have not shown any reason why future cases raising the issue of the application of section 733 will run into similar mootness problems and evade review, e.g., the controversy is of such short duration that it will likely evade review. (See *Press-Enterprise Co. v. Superior Court* (1986) 478 U.S. 1, 6.) In other cases where a juvenile court refuses to commit a minor to DJF under section 733, subdivision (c), such minor will most likely be younger, so that his or her case will reach an appellate court before jurisdiction over him or her is terminated. There is no reason to assume this issue will not be raised in the future in a live case.

Therefore, this matter is dismissed as moot. (*In re. I.A.* (2011) 201 Cal.App.4th 1484, 1490 ["When the court cannot grant *effective* relief to the parties to an appeal, the appeal must be dismissed."].)

DISPOSITION

The appeal is dismissed as moot.

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McKINSTER
Acting P. J.

We concur:

SLOUGH
J.

MENETREZ
J.